

Entered - 05/19/99 - sb  
CL00L0290 - DIANNE C. MITCHELL

CLAIM OF: **DAVE REISEMAN,**  
          **through his attorney,**  
          **Eric J. Frisch**  
          **720 Candler Building**  
          **127 Peachtree Street, NE**  
          **Atlanta, Georgia 30303**

**01- R-0939**

For damages alleged to have been sustained as a result of a personal injury due to stepping into an open water meter on December 4, 1999 at 3057 Peachtree Road, NE.

THIS ADVERSED REPORT IS APPROVED

BY:

  
\_\_\_\_\_  
**ROBERT N. GODFREY**  
**DEPUTY CITY ATTORNEY**

## DEPARTMENT OF LAW - CLAIM INVESTIGATION SUMMARY

Claim No. 00L0290

Date: June 12, 2001

Claimant /Victim DAVE REISEMAN  
BY: (Atty) Eric J. Frisch  
Address: 720 Candler Building, 127 Peachtree Street, NE, Atlanta, Georgia 30303  
Subrogation: Claim for Property damage \$ Bodily Injury \$ not stated  
Date of Notice: 12/04/99 Method: Written, proper X Improper         
Conforms to Notice: O.C.G.A. §36-33-5 X Ante Litem (6 Mo.) X  
Date of Occurrence 05/17/00 Place: 3057 Peachtree Road, NE  
Department                                  Division:                                   
Employee involved                                  Disciplinary Action:                                 

NATURE OF CLAIM: The claimant alleges that he was injured when he stepped into an open water meter. The claim was forwarded to United Water Services Atlanta for handling and their insurance carrier, The Travelers, has settled this claim with the claimant.

### INVESTIGATION:

Statements: City employee        Claimant        Others        Written        Oral         
Pictures        Diagrams        Reports: Police        Dept Report        Other         
Traffic citations issued: City Driver        Claimant Driver         
Citation disposition: City Driver        Claimant Driver       


### BASIS OF RECOMMENDATION:

Function: Governmental                                  Ministerial                                   
Improper Notice        More than Six Months        Other        Damages reasonable         
City not involved        X Offer rejected        Compromise settlement         
Repair/replacement by Ins. Co.                                  Repair/replacement by City Forces                                   
Claimant Negligent                                  City Negligent                                  Joint                                  Claim Abandoned                                 

Respectfully submitted,

  
INVESTIGATOR - DIANNE C. MITCHELL

### RECOMMENDATION:

Pay \$                                  Adverse X Account charged: 1A01        2J01        2H01         
Claims Manager:  Concur/date 06-13-01  
Committee Action:                                  Council Action

# MAYFIELD & COMMANDER, L.L.C.

ATTORNEYS AT LAW

720 CANDLER BUILDING  
127 PEACHTREE STREET, N.E.  
ATLANTA, GEORGIA 30303  
PH: (404) 584-8002  
FAX: (404) 584-7002

ENTERED - 5-19-00 - SB  
00L0290 - DIANNE MITCHELL

W. SCOTT MAYFIELD  
SCOTT C. COMMANDER  
ERIC J. FRISCH

EMAIL: EFRISCH@MAYFIELDCOMMANDER.COM

May 15, 2000

**Via Certified Mail,**  
**Return Receipt Requested**

Members of City Council, City of Atlanta  
55 Trinity Avenue, S.W.  
Atlanta, Georgia 30335

Re: **Ante Litem Notice of Claim of Dave Reiseman for Personal Injuries**

Dear Council Members:

Please be advised that this firm represents Mr. Dave Reiseman of 202 North Colonial Homes Circle, Atlanta, Georgia 30309 regarding his claim for damages against the City of Atlanta for negligent maintenance of a water meter and sidewalk and maintenance of a continuing nuisance. This letter shall serve as Mr. Reiseman's *ante litem* notice of his claim, under O.C.G.A. § 36-33-5. This letter includes a description of the incident, a copy of the police report, the names of the witnesses, and a brief description of Mr. Reiseman's injuries.

The incident occurred as follows. At or about 1:45 a.m. on Saturday, December 4, 1999, Dave Reiseman, Bill Underwood and Tito Flaque, were walking down the sidewalk along Peachtree Road in the Buckhead area of Atlanta. While he walked down the sidewalk, which was dimly lit, Dave stepped in a hole about six inches wide and about 1 and ½ feet deep, injuring his right leg. Dave screamed out to his friends in pain and Mr. Underwood and Mr. Flaque turned around to see what had happened. Dave pulled his leg out of the hole to find that he had stepped in a water meter hole filled with water. When he pulled his leg out of the hole, Dave saw that his pants were bloody.

Not knowing how seriously Dave was injured, Mr. Flaque called 911 using his cell phone. Two police officers - T. L. Castor and M. Cavalier - arrived shortly and investigated. Officer Castor wrote an incident report, which is attached hereto as Exhibit "A." The police officers noticed that Dave had visible bruising and was in pain. They then called an ambulance to take Dave to Piedmont Hospital.

The water meter hole that Dave stepped in was uncovered. True and correct copies of photographs taken of the water meter hole as it existed at the time of the incident are attached hereto as Exhibit "B." The two eyewitnesses, as well as the two police officers, observed that (1) the water meter hole was filled with muddy water, (2) the water meter hole was uncovered, (3) what appeared to be a makeshift cover was off to the side and (4) there were no warning signs or anything that would alert someone that this hole existed uncovered. The police officers called the City of Atlanta Water Department to warn them of the hole. The same police officers also noticed another uncovered water meter hole at 3041 Peachtree Street, just up the road from where this incident occurred.

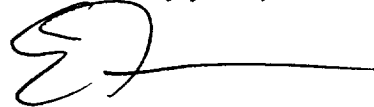
It appears, based on the facts above, that the City department responsible for maintaining the sidewalks in the Buckhead area failed to exercise ordinary degree of care with regard to this water meter, as well as the uncovered water meter discovered further up the road by the police officers. The fact that the police officers found another water meter hole just down the road from the one involved in this incident also speaks volumes. This fact shows that the condition of the water meters in Buckhead was an ongoing problem and a problem that could have been easily detected and remedied, before someone like Dave got hurt. Consequently, it appears that liability against the City for both negligent performance of a ministerial function, i.e. maintaining the sidewalks, as well as maintenance of a nuisance, is clear.

Unfortunately, Dave was injured when he stepped in the water meter hole. True and correct copies of the photographs of Dave's pants, which show the blood from his leg and which were taken at the time of the incident, are attached hereto as Exhibit "C." The Emergency Room physicians at Piedmont Hospital took x-rays, which showed that he did not break his leg in the incident. However, the Emergency Room physician did diagnose Dave with a serious contusion and sprain to his right leg. The Emergency Room Physicians allowed Dave to leave the hospital at 4:30 a.m. on crutches and instructed Dave to stay off of his leg for six weeks. Dave followed the doctor's instructions, which prevented Dave from, among other things, continuing his exercise routine. Also, Dave injured his back in the fall and has been treating with a chiropractor to relieve his pain. Notably, prior to this incident, Dave had no history of leg or back problems and maintained an active lifestyle. While Dave is only now able to exercise near the same level he had been at before this incident, there is no doubt that this fall has hampered his physical conditioning and his active lifestyle.

The City could have easily prevented Dave's injuries by properly maintaining the sidewalks and water meters in Buckhead. Because he was injured through no fault of his own but solely as the result of the City's negligence, Dave is making a claim for compensatory damages against the City. Dave's claim for damages includes, but is not limited to, his reasonable and necessary medical expenses and compensation for his pain and suffering. As Dave is still treating right now, the exact amount of his medical bills and time missed from work is not yet known.

Since this letter is Dave's *ante litum* notice of his claim, we encourage the City's Claims Division to speak with the witnesses, whose names are on the police report, as well as the reporting police officers. Dave is open to settling this claim without litigation after his doctor releases him at maximum medical improvement. As such, we are sending a copy of this letter to the City Law Department, Claims Division. If you need any information from us, please do not hesitate to call.

Respectfully yours,

A handwritten signature in black ink, appearing to be 'EJ Frisch', with a long horizontal line extending to the right.

Eric J. Frisch

Enclosure

cc: City of Atlanta Law Department, Claims Division  
Dave Reiseman

01-*R*-0939